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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

JOHN B. CUNDIFF and BARBARA C. CUNDIFF, husband and wife; ELIZABETH NASH, a married woman dealing with her separate property; KENNETH PAGE and KATHRYN PAGE, as Trustee of the Kenneth Page and Catherine Page Trust, Plaintiffs, v. DONALD COX and CATHERINE COX, husband and wife, et al., Defendants.	Case No. P1300CV20030399 Division 4 **RESPONSE TO PLAINTFFS' CUNDIFF, NASH AND PAGE RULE 54(g) MOTION FOR AWARD OF ATTORNEYS' FEES AND NON-TAXABLE COSTS** (Assigned to Honorable Kenton Jones) (Oral argument requested)

Defendant Robert D. Veres (hereinafter, "**Defendant**" or "**Veres**"), through his undersigned attorneys Musgrove, Drutz & Kack, P.C., pursuant to Ariz. R. Civ. P. 1, 7.1, 54, and any other applicable rule or law, opposes Plaintiffs' Plaintffs' Rule 54(g) Motion for Award of Attorneys' Fees and Non-taxable Costs dated July 2, 2013 (hereafter, "**Rule 54 Motion.**").

MEMORANDUM OF POINTS AND AUTHORITIES

I. OVERVIEW/BACKGROUND.

Plaintiffs filed a First Amended Complaint (also, "**FAC**") against Defendants Donald and Catherine Cox for Breach of Contract, Declaratory Judgment, and Request for Injunctive Relief in connection with the Declaration of Restrictions recorded June 13, 1974, at Book 916, Page 680,

Official Records of Yavapai County ("**Declaration**"). Plaintiffs allege, *inter alia*, that "Defendants [Cox] have breached the covenants and restrictions and restrictions by initiating and maintaining a commercial enterprise on their property in violation of the recorded Declaration of Restrictions. *See* FAC, ¶ 11.

Plaintiffs have asserted no claims against Mr. Veres.

The Declaration does *not* provide for an award of attorneys' fees.

On May 24, 2007, the Appeals Court ruled that the Court erred in granting summary judgment to Coxes, finding that:

> ¶13 The trial court interpreted existing Arizona case law to hold that restrictions are not favored and must be strictly construed. However, the trial court did not have the benefit of the Arizona Supreme Court's most recent pronouncement in this area. In *Powell*, our Supreme Court rejected the very rule of construction utilized by the trial court. In that case, the court noted that some Arizona decisions have referred to a policy of construing restrictive covenants strictly in favor of the free use of land, but that such references appear exclusively in *dicta*. *Powell*, 211 Ariz. At 557, ¶ 15, 125 P.3d at 377. The court stated the "cardinal principle in construing restrictive covenants is that the intention of the parties to the instrument is paramount." *Powell,* 211 Ariz. at 556, ¶ 9, 125 P.3d at 376 (quoting *Ariz. Biltmore Estates Ass'n v. Tezak*, 177 Ariz. 447, 449, 868 P.2d 1030, 1032 (App. 1993)). The court then adopted the construction approach set forth in Section 4.1(1) of the Restatement (Third) of Property (Servitudes): " A servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created." *Powell,* 211 Ariz. at 557, ¶ 13, 125 P.3d at 377.
>
> ***
>
> ¶17 The Coxes' tree farm is clearly an agricultural business. But nothing in the Declaration suggests that any one type of business was intended to be excluded from section two of the restrictions. On the contrary, the wording used in the restriction is broad, prohibiting any "trade, business, profession or any other type of commercial or industrial activity." Moreover, the trees and shrubs cultivated and stored on the property are grown and maintained there for business purposes. ***
>
> ¶18 Furthermore, application of the restriction to the Coxes' use of their property is consistent with the Declaration as a whole. ***
>
> ***
>
> ¶20 As confirmed in [Robert] Conlin's affidavit, the Declaration ensures not only a rural setting, but a rural, residential environment. Given that interpretation, the Coxes' agricultural business use of the property violates section two of the Declaration.

¶21 Having concluded the trial court erred in interpreting the restriction at issue, we vacate the judgment and need not address the Cundiffs' argument regarding the amount of attorney fees awarded therein.

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¶36 We conclude that the absent property owners are necessary parties given the issue to be decided in this case. Under the rule, necessary parties must be joined if they are "subject to service of process and . . . [their joinder] will not deprive the court of jurisdiction over the subject matter of the action." Ariz. R. Civ. P. 19(a). The trial court must determine on remand whether these parties are also indispensable under Rule 19(b).

¶37 *** In our discretion, both parties' requests for attorney fees are denied. Further, in light of our disposition on the issues, we determine that the parties will bear their own costs on appeal.

See May 24, 2007, Court of Appeals Memorandum Decision. Following the Memorandum Decision, the trial Court on March 10, 2008, ruled that the Coyote Springs Ranch property owners subject to the Declaration were indispensable parties ("**Rule 19 Parties**"):

> For the reasons as stated on the record, the Court **finds**, based upon rule 19(a) . . . and the language of the Declaration . . . as well as the fact that it is Plaintiff's choice to bring this action, and the Defendants are simply defending and not bringing a separate action, counter-claim, or cross-claim to invalidate the Declaration, that it is appropriate to **ORDER** that the Plaintiff shall join all landowners subject to the Declaration . . . dated June 12, 1974.

Hearing on Nature of Proceedings, March 10, 2008. The Court elaborated on this issue in a Ruling filed on August 25, 2008:

> And although unlikely, even if the Plaintiffs prevail in avoiding a finding of abandonment, a property owner who agrees with the Defendants' position regarding abandonment of the Declaration . . . could file another declaratory action and name the Plaintiffs as parties in the lawsuit. Without their joinder, the Plaintiffs could not claim the ruling in this case is binding upon such a property owner. More likely, if Defendants prevail, any other property owner who is not a party to this suit could file the same action against the Defendants as is currently pending. The Defendants will not be able to claim their victory in this case is binding upon other property owners unless they are joined. The Court finds that facing multiple litigation on the same issue is prejudicial to all the parties.
>
> There is certainly a reason most modern declarations of restrictions name an association as the appropriate party to bring an enforcement action on behalf of all property owners. While the failure of this Declaration . . . to designate one entity to bring an action on behalf of all property owners is not the fault of either side in this case,

neither side should be prejudiced by facing multiple litigation due to the terms of the Declaration.

***

Ruling, filed August 25, 2008.

Based upon Plaintiffs' ostensible 'research' of county records[1], one of these 'indispensable parties' was Mr. Veres, whose joinder was involuntary. Per the Plaintiffs' parcel ownership matrix, Mr. Veres owns Assessor's Parcel Numbers 103-01-113K, 103-01-113M, 103-01-113P, and 103-01-113Q. *See* Plaintiffs' Notice of Filing Third Revision of Property Owners List dated March 7, 2011.

The Notice filed June 17, 2010, entitled "THIS LAWSUIT MAY AFFECT YOUR RIGHTS IN COYOTE SPRINGS RANCH PROPERTY RIGHTS," clearly does not impute any claims against any of the Rule 19 parties, including Mr. Veres.

On March 25, 2011, Mr. Veres filed an answer to the FAC, asserting, *inter alia*, that none of the allegations were directed toward Veres.

In its June 14, 2013, Under Advisement Ruling, the Court held that the only issue before the Court is "whether this matter should proceed to trial based solely upon defenses of waiver and/or abandonment of the CC&Rs as a result of the restrictions imposed upon the use of the properties having been so thoroughly disregarded as to result in such a change in the area as to destroy the effectiveness of the restrictions and defeat the purposes for which there were imposed. **The issue is whether the property remains rural and whether the property remains residential, or whether the property is no longer rural or no longer residential**." Again, no issues directly implicated Mr. Veres or the Veres property. The Court found "no real debate" that the property remains rural. **Significantly**, the Court found that

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[1] The Plaintiffs did not obtain a litigation guarantee from a title company to properly identify the parcels that are subject to the Declaration.

> This assessment of the [private investigator Sheila] Cahill determinations is troubling as many of the notations of Cahill indicate conduct not "intended" to be prohibited under the CC&Rs as the Conlin affidavit indicates and the Arizona Court of Appeals has previously found. ***
> However, the failing of utilizing this approach rather than actually knocking on doors or deposing property owners to determine what occurs on their property is that a vast portion of the properties assessed have violations of the CC&Rs attributed to them for conduct that, by appearances, was never intended to constitute a violation according to the Conlin affidavit . . . The existence of numerous asserted violations is based upon conjecture. ***
>
> In that regard, conclusory statements are simply insufficient to raise any genuine issues of material fact under Rule 56(e). *** This rule requires personal knowledge and a showing that the affiant is competent to testify as to the matters. ***
>
> *** To the Court's understanding, **the only portion of Coyote Springs that has been utterly given over to a non-residential use is that of Defendants Cox; that being their use of their 19 acres for purely commercial purposes**.

Under Advisement Ruling, filed June 14, 2013. The June 14, 2013, Ruling makes it clear that the only issue before the Court involves the Coxes' use of their 19 acres. The Court has never ruled that Mr. Veres has breached the Declaration, nor could it because there are no such claims pending. As the Court will recall, on March 6, 2013, the Varilek/Veres litigation (P1300-CV20090822) was dismissed without prejudice.

Plaintiffs assert that "an appropriate division of responsibility for the allocation of Plaintiffs' attorneys' fees would be to divide those fees among the Defendants starting with their formal entry into the case." Rule 54 Motion, p. 3:22-24. (As discussed above, Mr. Veres filed his answer on March 25, 2011). Plaintiffs further assert that they "have paid or agreed to pay undersigned counsels attorney's fees for all of the attorneys who help achieve the final result in this case." Rule 54 Motion, p. 6:19-21. Yet, virtually all of the billing statements attached to the Affidavit of J. Jeffrey Coughlin in Support of Application for Attorneys' Fees and Costs dated July 2, 2013, were submitted to Alfie Ware. Mr. Ware is not a party to the instant case. According to Attorney Coughlin's Affidavit, communication between Alfie Ware and Mr. Coughlin's Office amounted to 25.5 hours and Plaintiffs are requesting close to $6,000 in connection with these discussions.

II. **LEGAL ARGUMENT.**

A. **There is no ruling that Veres breached the Declaration; thus, Plaintiffs are not the successful party pursuant to A.R.S. § 12-341.01.**

In the case at bar, the only arguable basis for an award of fees is statutory, because the Declaration does not provide for an award of attorneys' fees. In considering whether to award fees under A.R.S. § 12-341.01, "first the trial court must determine which party was successful and then whether attorney fees should be awarded. *** However, there is no presumption that a successful party should be awarded fees under § 12-341.01." *Motzer v. Escalante*, 228 Ariz. 295, 296, 265 P.3d 1094 (App. 2011).

In this case, the threshold inquiry -- who was the successful party -- readily leads to the conclusion that no attorneys' fees may be imputed to Veres. As between Veres and Plaintiffs, there has been no finding that Veres breached the Declaration. Thus, Plaintiffs are not the successful parties and no statutory basis exists for an award of attorneys' fees against him.

Veres is the proverbial 'innocent bystander' whom Plaintiffs joined as an indispensable party. Veres filed an Answer to the FAC, asserting that none of the allegations were directed at him, and requested that the case be dismissed with prejudice. *See* Answer filed March 25, 2011.

B. **The court has broad discretion regarding whether to award attorneys' fees, and there is no presumption that a successful party should be awarded fees.**

For the sake of argument, even *disregarding* the indisputable fact that Plaintiffs have not prevailed in any claims against Veres, an award of attorneys' fees under A.R.S. § 12-341.01 is discretionary; further, there is *no* presumption that a successful party should be awarded fees under § 12-341.01. *Motzer*, 228 Ariz. at 296, 265 P.3d at 1094; *Layne v. Transamerica Financial Svcs*, 146 Ariz. 559, 563, 707 P.2d 963, -- (App. 1985). A.R.S. § 12-341.01 provides as follows:

> A. In any contested action arising out of a contract . . . the court **may** award the **successful** party reasonable attorney fees. ***

> B. The award of reasonable attorney fees pursuant to this section should be made to mitigate the burden of the expense of litigation to establish a just claim or a just defense. It need not equal or relate to the attorney fees actually paid or contracted, but the award may not exceed the amount paid or agreed to be paid.

[emphasis added]. The Court should exercise its broad discretion and decline to award attorneys' fees against Mr. Veres in this case. *See*, e.g., *Multari v. Gress*, 214 Ariz. 557, 155 P.3d 1081 (App. Div. 1 2007) (court exercised its discretion in *not* awarding fees to prevailing party on appeal, requesting declaratory relief and attorneys' fees pursuant to A.R.S. § 12-341.01 regarding deed restrictions).

The Coyote Springs Declaration is *unlike* the CC&R's in *Ahwatukee Custom Estates Mgt. Ass'n v. Bach*, 193 Ariz. 401, 973 P.2d 106 (1999), which included a provision for recovery of reasonable attorneys' fees incurred, in addition to any relief or judgment entered by the Court. *Id.* at 404, --. The Coyote Springs Declaration contain *no* equivalent provision. Thus, the only possible basis to award fees is statutory, pursuant to A.R.S. § 12-341.01. However, such an award is discretionary and in this case is not warranted against Mr. Veres, a non-voluntary party who was joined 'against his will'. Our courts have held the statutory language is permissible and there is no requirement that the trial court grant attorney's fees to the prevailing party in all contested contract actions. *Autenreith v. Norville*, 127 Ariz. 442, 444, 622 P.2d 1, 3 (1981).

1. **The *Warner* factors operate against Plaintiffs.**

a. First, Plaintiffs argue that Plaintiffs' "only redress for the Defendants violating the Restrictions was to sue them" and that "Plaintiffs have prevailed with respect to all the relief sought." Rule 54 Motion, p. 5:11-12; 6:2-3. Plaintiffs did *not sue* Veres for violating the Declaration and Plaintiffs did not prevail against Veres. Rather, it is *because* Plaintiffs sued the *Coxes* that Veres was involuntarily forced into litigation. Thus, Plaintiffs do not "carry" *Warner*

factor number one. *Cf.* Rule 54 Motion, p. 5:23-24 (*citing Associated Indemnity Corp. v. Warner*, 143 Ariz. 567, 694 P.2d 1184 (1985)).

b. Second, Plaintiffs argue that they are entitled to an award of attorneys' fees because "Defendants are the owners of the property on which they conducted their business. *** They [the Coxes] were offered an opportunity following the decision by the Court of Appeals to walk away from the litigation with each side to pay their own attorneys' fees; they declined." Rule 54 Motion, p. 5:18-24. Plaintiffs may have offered a 'walk-away' to the Coxes. Plaintiffs did not offer Mr. Veres a 'walk-away'. Thus, Plaintiffs do not "carry" *Warner* factor number two.

c. Third, Plaintiffs did not prevail on any claims against Veres. Indeed, no claims were asserted by the Cundiff Plaintiffs against Veres that Veres was in breach of the Declaration. *Contra* Plaintiffs' Rule 54 Motion, p. 6:1-3. Thus, Plaintiffs do not "carry" *Warner* factor number three.

d. Fourth, the novelty of the legal questions presented by this case are twofold: (i) the published decision of *Powell* as discussed in the Court of Appeals' Memorandum Decision (excerpted above), which clearly altered the legal landscape concerning interpretation of covenants and restrictions that the trial Court did not 'have the benefit of' in entering its prior rulings; and (ii) whether the abandonment and waiver defense raised by Defendants Cox required joinder of all property owners subject to the Declaration under Rule 19. *Contra* Plaintiffs' Rule 54(b) Motion, p. 6:7-10. A good portion of time was spent on the Joinder issue, as evidenced by multiple billing entries involving parcel-ownership research and Attorney Coughlin's discussion with multiple property owners who had questions concerning the lawsuit. Thus, Plaintiffs' do not "carry" *Warner* factor number four.

e. Fifth, an award of attorneys' fees against Mr. Veres would discourage him, and involuntary parties like him, from asserting their right to due process and an opportunity to raise legitimate defenses, "for fear of incurring liability for substantial amounts of attorney's fees." *Ahwatukee*, 143 Ariz. at 570, 694 P.2d at --. *See also Harris v. Maricopa County Superior Court*, 631 F.3d (C.A. 9 Ariz. 2011). Thus, Plaintiffs' do not "carry" *Warner* factor number five.

In *Ahwatukee*, the appellate court held that the trial court did *not* abuse its discretion in *denying* an award of attorneys' fees to the prevailing party as follows:

> In this case there exists a reasonable basis in the record upon which the trial judge could have denied attorney's fees. The action in the superior court was instituted by an insurer against an insured party to determine the insurer's liability under an insurance policy. The insurer sought a construction of the insurance policy which would relieve it of the expense of defending and paying the claim against Warner. The trial court ruled for the insurer and presumably concluded that, considering the **nature of the action and the relative economic positions of the parties, no attorneys' fees should be awarded to the insurer**.

Id. at 571, --. In the case at bar, we have analogous circumstances. Alfie Ware, not the Plaintiffs, have paid for the litigation since its inception. Mr. Ware is akin to the insurer in *Ahwatukee*, whose economic position has allowed him to sustain and fund Plaintiffs' entire litigation. Second, considering the unique nature of this action -- i.e. the joinder of Coyote Springs Property owners -- Rule 19 parties should not be punished for asserting their due process rights once they have been injected into the proceedings simply because they are property owners.

In conclusion, an award attorneys' fees against Mr. Veres are not supported by the *Warner* factors.

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C. **Imposition of attorneys' fees against involuntary parties like Mr. Veres would have a chilling effect on litigation.**

The case at bar is similar to *Nickerson v. Green Valley Recreation, Inc.*, wherein the appellate court upheld the trial court's denial of attorneys' fees to Defendants Green Valley Recreation (GVR), as follows:

> Although GVR prevailed on all claims, the trial court made a number of findings in determining whether to award fees, including that the plaintiffs had brought novel claims "with the appearance of merit" and that litigation was unlikely to have been settled or avoided by alternative dispute-resolution processes. The court also determined that "given the close nature of this case" and the "unusual nature" of the servitudes, "**imposition of fees would have a chilling effect on future litigation to determine rights as to servitudes**." Because the court articulated a reasonable basis for denying the request for attorney fees, and we cannot say it abused its discretion, we deny the cross-appeal.

Id., 228 Ariz. 309, 321, 265 P.3d 1108, -- (App. 2011). [emphasis added]. Although in the case at bar, Plaintiffs may have prevailed in the sense that the Court ruled against the Coxes, given the "close nature of this case" and the "unusual nature" of the Declaration which required joinder of all the parties in the absence of a homeowners association entity (*see* Court's Ruling filed 08-25-08 excerpted above), imposition of attorneys' fees would have a chilling effect on future litigation to determine rights as to servitudes. *Id.* Necessary but involuntary parties like Mr. Veres would be deterred from exercising their right to due process and the opportunity to be heard on their claims and defenses for fear that attorneys' fees would be assessed against them, even though they had no choice regarding whether to 'opt in' or 'opt out' of the litigation.

D. **Many entries should not be allowed under the "billing judgment" paradigm.**

Plaintiffs suggest that "an appropriate division of responsibility for the allocation of Plaintiffs' attorneys' fees would be to divide those fees among the Defendants, starting with their formal entry into the case." Rule 54 Motion, p. 3:22-24. Mr. Veres filed his answer on March 25, 2011. Therefore, this Response shall focus on the time-entries from March 25, 2011 to present.

Many entries do not comport with the "billing judgment" paradigm, as set forth by our courts in *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183, 877, 673 P.2d 927, -- (1983)[2]; *Hensley v. Eckerhart*, 461 U.S. 424 (1983); *Metro Data Sys., Inc. v. Durango Sys., Inc.*, 597 F.Supp. 244 (D. Ariz. 1984); and *Woerth v. City of Flagstaff*, 167 Ariz. 412, 419, 808 P.2d 297, 305 (App. 1990).

A matrix of Plaintiffs' counsel's duplicative, unreasonable and unnecessary billing entries are set forth in the matrix attached hereto as **Exhibit A.**

Next, even if the Court were inclined to award fees in favor of Plaintiffs and against Veres, the only attorneys' fees that should be awarded should be those related to Mr. Veres' involvement in the proceedings as summarized in **Exhibit B** attached hereto. The maximum amount of fees incurred by Jeffrey Coughlin that could be imputed to Mr. Veres is $419.00.

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[2]"Examples of the type of services which may be included in a fee application are: 1. Preparing pleadings and documents necessary to initiate the appeal. 2. Reviewing the records on appeal in anticipation of drafting the briefs. 3. Researching needed for drafting the briefs. 4. Drafting the briefs. 5. Preparing for oral argument and time at the argument. 6. Telephone calls and correspondence with other counsel directly related to the appeal. 7. Communication and correspondence with the client only if directly necessary and in furtherance of the appeal. 8. Travel time where necessary. 9. Preparing post-decision motions." *Id.*

E. **No taxable costs should be imputed to Mr. Veres; Plaintiffs are not the successful party**.

Similar to A.R.S. § 12-341.01, under § 12-341, taxable costs are available only if a party is successful, as follows:

> The successful party to a civil action shall recover from his adversary all costs expended or incurred therein unless otherwise provided by law.

As discussed above, there is no finding that Mr. Veres has breached the Declaration. Plaintiffs have not succeeded in any claims against Mr. Veres. Indeed, Plaintiffs have not asserted any claims against Mr. Veres. As such, Plaintiffs are not in a position to obtain taxable costs against Mr. Veres.

As discussed above, Mr. Veres was involuntarily joined as a party. All taxable costs set forth in Plaintiffs' Statement of Taxable Costs Paid to Favour, Moore, & Wilhemsen, P.A. dated July 2, 2013,[3] and Plaintiffs' Statement of Taxable Costs Paid to J. Jeffrey Coughlin PLLC dated July 2, 2013 ("**Coughlin**") (*See* Exh. "A" attached *thereto*) were incurred *prior* to the joinder of Mr. Veres.

With regard to the F&W taxable costs, Mr. Veres was not afforded any opportunity to participate in the depositions that occurred, nor given the opportunity to participate in any of the pre-trial proceedings that occurred prior to his joinder. With regard to the Coughlin taxable costs, these all relate to service of process of the Rule 19 parties. There are no claims among or between these Rule 19 parties and Mr. Veres.

The Court should not impute any taxable costs to Mr. Veres.

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[3] now, Favour & Wilhelmsen, PLLC ("**F&W**").

Next, Mr. Veres objects to any costs that are not allowed by statute. *See* A.R.S. § 12-332; *Ahwatukee Custom Estates Management Ass'n v. Bach*, 193 Ariz. 401, 402-03, 973-P.2d 106, 107-08 (1999). Costs cannot be expanded from the precise items allowed in A.R.S. § 12-332. *Id.* Plaintiffs' Statement of Taxable Costs (F&W) fails to include any supporting or vouching evidence, to determine whether Plaintiffs have included costs that are proscribed or duplicative, such as deposition transcripts in multiple formats (e.g., ASCII, e-trans, four-in-one). Any duplication amounts to a copy charge, which is not a recoverable cost. *Id.* 193 Ariz. At 402-03, 973 P.2d at 107-08.

Turning to specific entries, Yavapai County Recorder fees are not allowed. *See* Plaintiffs' Statement of Taxable Costs (F&W) at pp. 2, lines 8-9 (9/2/2004 - $30); line 15 (7/13/2005 - $34); line 16 (7/14/2005 - $6); and line 25 (7/26/2005 - $12).

The Court of Appeals filing fees are duplicative. *Id.* at p. 3, lines 5-7 ($140 and $280). Moreover, the Court of Appeals held that "in light of our disposition of the issues, we determine that the parties will bear their own costs on appeal." Memo. Dec., filed 05/24/07, ¶37. Plaintiffs should not be permitted to lump appellate filing fees in with their Statement of Taxable Costs.

F. **Plaintiffs are not entitled to their non-taxable costs**.

Non-taxable costs are not recoverable as part of an attorneys' fees award under A.R.S. § 12-341.01. *See Ahwatukee Custom Estates Mgt. Ass'n v. Bach*, 193 Ariz. 401, 973 P.2d 106 (1999). Allowing a party to recover non-taxable costs under the guise of attorneys' fees would undermine the legislative intent express in A.R.S. § 12-332. *Id.* at 402, --. Thus, non-taxable costs such as delivery and messenger services charges, copying expenses, telecopier and fax charges, postage, and long distance telephone charges are not recoverable. *Id.* at 402, --.

Moreover, there is no provision in the Declaration which permits an award of 'expenses'. Plaintiffs seek non-taxable costs in the amount of $2,772.63. Rule 54 Motion, p. 1:23-24. However, Plaintiffs have not set forth any basis for the award of non-taxable costs. Thus, such non-taxable costs should be denied.

DATED this 22 day of July, 2013.

MUSGROVE, DRUTZ & KACK, P.C.

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EXHIBIT A

Date	Author	Entry	Time	Amount	Objection/Basis
3/28/11	CP	Summarize and index all new pleadings, calendar deadlines	.70	$ 66.50	Clerical
3/28/11	CP	Telephone Conference with Camp Verde Journal to confirm publication of summons	.20	$ 19.00	Clerical
4/12/11	CP	Draft Objection to Motion for Judicial Reassignment	.30	$ 28.50	Duplicate of JC entry dated 04/21/11
4/18/11	JC	Telephone call from Alfie re: e-mail from John Cundiff wanting to know next step in litigation	.20	$ 50.00	Unnecessary and Unreasonable Conference with Non-Party Ware
5/9/11	CP	Summarize all pleadings, update index of same, revise Caption re: Robert Schmitt representation of Taylor & Thomas - Taylor	.90	$ 85.50	Clerical
5/16/11	JC	Reviewed fax from Ce Ce re: Coyote Springs owner trying to split lot, gave instructions to paralegal to research what phase property located in, Conference with Paralegal Christy Padilla re: her findings and how to locate Covenants, Conditions and Restrictions for phase two (.6) Conference with Alfie and Ce Ce re: how to proceed against seller of property (.2)	.80	$ 200.00	Unnecessary and Unreasonable Conference with Non-Party Ware
5/23/11	JC	Teleconference with Alfie re: letter to property owner in Phase 2 who is splitting lot	.10	$ 25.00	Unnecessary and Unreasonable Conference with Non-Party Ware

Date	Author	Entry	Time	Amount	Objection/Basis
7/6/11	CP	Review of July 5, 2011, ruling and orders re: withdrawal of Jeff Adams for Several property owners, update mailing certificate to include al owners previously represented by Jeff Adams, summarize all new pleadings and update pleadings index.	1.5	$ 142.50	Duplicative of 07/05/11 JC Entry; Clerical
11/3/11	CP	Summarize and update index for pleadings (.3); preparation of file for J. Jeffrey Coughlin use at 11/7/2011 hearing (.3)	.60	$ 57.00	Clerical
12/02/11	JC	Voice mail from Alfie Ware and telephone call to Alfie Ware re: videotaping Coyote Springs and Monday's scheduling conference (.3)	.30	$ 75.00	Unnecessary and Unreasonable Conference with Non-Party Ware
12/20/11	JC	Message from Alfie Ware re: article in Courier and email from John Cundiff re: Courier article, telephone call to Alfie Ware re: same reviewed article and gave instructions to paralegal to research CC&R restrictions on animals and county regulation re: same (.4)	.40	$ 100.00	Unnecessary and Unreasonable Conference with Non-Party Ware
04/16/12	JC	Message from Alfie Ware re: Courier article about Diamond Valley business, reviewed article and telephone call to Alfie Ware to discuss	.20	$ 50.00	Unnecessary and Unreasonable Conference with Non-Party Ware
05/29/12	CP	Preparation of file for J. Jeffrey Coughlin use at status conference, summarize new pleadings and update pleadings index (.5)	.50	$ 47.50	Clerical

Date	Author	Entry	Time	Amount	Objection/Basis
06/08/12	JC	Reviewed Defendant's 9th Supplemental Disclosure Statement re Prescott Soaring Society, viewed location on google earth, Defendant's Motion for Site Inspection and Telephone call to Alfie Ware re: alerting plaintiff oriented parties to watch for any changes.	.60	$ 150.00	Unnecessary and Unreasonable Conference with Non-Party Ware
06/11/12	JC	Telephone call from Alfie Ware re: video tapes e took of Coyote Springs properties and began review of same (.4)	.40	$ 100.00	Unnecessary and Unreasonable Conference with Non-Party Ware
6/25/12	JC	Attempted to view 3 new DVDs which Cundiffs recorded over the weekend, nothing recorded, attempted to retrieve recording by other means, unable to do so and telephone call to Alfie Ware to advise of same	.40	$ 100.00	Clerical; Unnecessary and Unreasonable Conference with Non-Party Ware
10/22/12	CP	Telephone conference with Alfie Ware re: same (.1)	.10	$ 19.00	Unnecessary and Unreasonable Conference with Non-Party Ware
12/27/12	JC	Voice mail from Alfie Ware and voice mail to Alfie Ware re: status of Motion for Summary Judgment	.10	$ 25.00	Unnecessary and Unreasonable Conference with Non-Party Ware
12/28/12	JC	Telephone call to Alfie Ware to advise of filing Motion of Summary Judgment and discussed chances of success (.2)	.20	$50.00	Unnecessary and Unreasonable Conference with Non-Party Ware
12/28/12	JC	Complete preparation of Motion for Summary Judgment and Statement of Facts, final preparation of exhibits, mail packet to all parties	3.40	$323.00	Clerical (Mailing activities)

Date	Author	Entry	Time	Amount	Objection/Basis
1/29/13	JC	Telephone call from Alfie Ware re: Motion to Strike from Adams and status of Motion for Summary Judgment	.20	$50.00	Unnecessary and Unreasonable Conference with Non-Party Ware
1/29/13	JC	Completed Joint Pretrial Statement	2.7	$675.00	Excessive time billed for joint pretrial statement; failure to exercise billing judgment; see other entries pertaining to Joint Pretrial Statement
3/5/13	CP	Preparation of Plaintiff's Joinder and Reply in Support of Motion for Summary Judgment for filing and mailing to all property owners	2.4	$ 228.00	Clerical (Mailing activities)
3/21/13	JC	Telephone call from Alfie Ware re: Drutz withdrawing and advised re: Varilek v. Veres	.10	$ 25.00	Unnecessary and Unreasonable Conference with Non-Party Ware
04/11/2013	CP	Preparation of file for J. Jeffrey Coughlin use at 4/16/2013 oral argument (.8); summarize all new pleadings and update index re: same (.8)	1.6	$ 152.00	Clerical
4/18/13	JC	Telephone call to Alfie Ware to advise of argument on Motion for Summary Judgment and upcoming Motion for Reconsideration	.20	$ 50.00	Unnecessary and Unreasonable Conference with Non-Party Ware
		TOTALS	19.1	$ 2,893.5	

EXHIBIT B

J. Jeffrey Coughlin PLLC

Date	Author	Entry	Time	Amount	Hourly Rate
4/27/2011	JC	Reviewed Veres' Joinder in Objecting to Judicial Reassignment and compared with our Objection	.3	$ 75.00	$ 250.00
8/21/2012	CP	Conference with H. Jeffrey Coughlin re Defendants' Cox List of Witnesses and Defendant Veres Joinder	.2	$ 19.00	$ 95.00
8/21/2012	JC	Reviewed Defendant Veres Joinder in Notice - *	.1	$ 25.00	$ 250.00
2/25/13	JC	Telephone call from Mark Drutz re: withdrawing as counsel for Veres	.2	$ 50.00	$ 250.00
3/5/13	JC	Letter from Mark Drutz re: willingness to stipulated that his client Veres will not actively participate in consolidated action pending final resolution of case, reviewed Veres v. Varilek file and considered what position to take	.6	$ 150.00	$ 250.00
4/15/13	JC	Reviewed Veres Opposition - *	.4	$ 100.00	$ 250.00
		TOTALS	**1.8**	**$419.00**	

* - Reduced because entry was block-billed.